

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

No C 06-3720
CR 05-0665 VRW

v

ORDER

LUIS PEREZ-GONZALEZ,
Defendant.

Defendant Luis Perez-Gonzalez ("defendant") has filed a motion attacking his sentence under 28 USC § 2255 claiming ineffective assistance of counsel. CR Doc #28-31. The United States filed a response urging the court to deny defendant's motion. CR Doc #33. For the reasons stated herein, defendant's motion is DENIED.

I

On October 13, 2005, the government charged defendant with violating 8 USC § 1326 (CR Doc #1), and on October 25, 2005 a grand jury indicted defendant with the same charge (CR Doc #4).

1 Pursuant to § 1326, defendant faced a possible twenty year maximum
2 sentence due to his prior deportation and criminal record. See §
3 1326(b); CR Doc #33 at 2. On December 27, 2005, defendant's
4 counsel filed a motion to suppress (CR Doc #12) and on January 10,
5 2006, the government filed its opposition to the motion (CR Doc
6 #13). The court held a hearing on January 24, 2006 and, at the
7 conclusion of oral argument, the court continued the case until
8 February 7, 2006 in order to hold an evidentiary hearing. CR Doc
9 #16. It was during this interval that the defendant and government
10 began their plea negotiations.

11 On February 16, 2006, the government filed a superceding
12 indictment that charged defendant with two counts of illegal entry
13 by an alien under 28 USC § 1325. CR Doc #18. The two counts
14 together carried a maximum prison sentence of thirty months. See
15 28 USC § 1325(a). Twelve days later, on February 28, defendant
16 changed his plea and entered into a formal plea agreement with the
17 government, which was approved by the court the same day. CR Docs
18 ## 21-23, 25.

19 Pursuant to the plea agreement, defendant pled guilty to
20 two counts of illegal entry into the United States in violation of
21 8 USC § 1325(a). Doc #23. In the agreement, defendant admitted
22 being a citizen of Mexico and not of the United States and entering
23 the United States illegally, having previously committed the same
24 offense. Id at 2. He agreed, inter alia, that section 2L1.2 of
25 the Sentencing Guidelines applied to count two and that he would
26 not "file any collateral attack on my convictions or sentence,
27 including a petition under 28 USC § 2255, at any time in the future
28 after I am sentenced, except for a claim that my constitutional

1 right to the effective assistance of counsel was violated." Id at
2 3.

3 On March 8, 2006, judgment was entered against the
4 defendant. CR Doc #25. He was sentenced to a thirty-month term of
5 imprisonment followed by one year of supervised release. Id.

6 Defendant first contacted the court by letter filed May
7 31, 2006 (CR Doc #28) and sent a second letter further elaborating
8 the grounds for his motion that was filed June 12, 2006 (CR Doc
9 #29). Defendant's motion rests on the argument that he received
10 ineffective assistance of counsel in connection with his decision to
11 enter a guilty plea. Id.

12 II

13 A challenge to a guilty plea based on a claim of
14 ineffective assistance of counsel is analyzed using a two-part test:
15 (1) the defendant must show that his counsel's performance was
16 deficient and (2) the deficient performance prejudiced his defense.
17 Hill v Lockhart, 474 US 52, 57 (1985); Weaver v Palmateer, 455 F 3d
18 958, 965 (9th Cir 2006). To show deficient performance, the
19 defendant must show that his counsel's representation fell below an
20 objective standard of reasonableness. See United States v
21 Rubalcaba, 811 F2d 491, 494 (9th Cir 1986), cert denied, 484 US 832
22 (1987). Where a defendant is represented by counsel during the plea
23 process and enters his plea upon the advice of counsel, the
24 voluntariness of the plea depends on whether counsel's advice was
25 "within the range of competence demanded of attorneys in criminal
26 cases." Hill, 474 US at 56 (1985) (internal quotations omitted).
27 The "court must indulge a strong presumption that counsel's conduct
28

1 falls within the wide range of reasonable professional assistance *
2 * *." Strickland v Washington, 466 US 668, 689 (1984) (internal
3 quotations omitted). In order to meet the "prejudice" requirement,
4 "the defendant must show that there is a reasonable probability
5 that, but for counsel's errors, he would not have pleaded guilty and
6 would have insisted on going to trial." Hill, 474 US at 59.

7 A defendant's valid plea is not made involuntary because
8 he is attempting to limit the possible maximum penalty that might be
9 imposed if he refuses the agreement. See Brady v United States, 397
10 US 742, 751 (1970); Parker v North Carolina, 397 US 790, 795 (1970).

11 12 III

13 Defendant's claim for ineffective assistance of counsel is
14 as follows. Defendant met with his counsel on or about February 24,
15 2006 to discuss the plea agreement that had been reached by his
16 counsel and the United States Attorney's office. Doc ##28, 29.
17 Defendant's counsel advised him that if he did not accept the plea
18 agreement the government would not offer it again. Doc #28.
19 Defendant told his counsel that he wanted to discuss the plea
20 agreement with his parents over the weekend. Doc ##28, 29. On
21 Monday, after considering the plea agreement over the weekend,
22 defendant asserts that he told his counsel he did not wish to accept
23 the plea agreement. Id. Defendant maintains that his counsel then
24 told him that if he did not accept the plea agreement he had made
25 his counsel "waste [his] time for nothing," and that defendant was
26 likely to receive a seventy-two month prison sentence. Id. As a
27 result, defendant asserts that he was "so scared by what counsel
28 said that I refused to read [the] plea-agreement and just wanted to

1 get it over with and I didn't have no choice but to plea guilty * *
2 *." Id. Defendant contends that his lawyer, by making the
3 statement above, coerced him into pleading guilty, thereby making
4 his plea involuntary. The court rejects this argument.

5 Defendant has failed to overcome the first prong of Hill,
6 especially in light of the "strong presumption" the court must
7 afford counsel's actions. See Strickland, 466 US at 689. Defendant
8 offers no evidence indicating that his counsel's performance fell
9 below an objectively reasonable standard or that his advice fell
10 outside the range of competence demanded of attorneys in criminal
11 cases. Advising a defendant that failing to accept a plea bargain
12 could result in a significantly higher sentence is not unreasonable
13 and does not constitute ineffective assistance of counsel.

14 Even assuming, arguendo, that defendant was able to
15 surmount the "reasonableness" prong, defendant is unable to meet the
16 "prejudice" prong established in Hill. Defendant bears the burden
17 of showing that but for his counsel's error, he would have forgone a
18 guilty plea and pursued a trial instead. See Hill, 474 US at 59.
19 Defendant presents no evidence or argument to this effect. The
20 court rejects defendant's contention that he was prejudiced by his
21 attorney apprising him of the potential consequences that might stem
22 from refusing the plea bargain. It is the attorney's duty to
23 consult with his client on important decisions and to keep him
24 informed of important developments. See Nunes v Mueller, 350 F 3d
25 1045, 1053 (9th Cir 2003). Needless to say, sentencing alternatives
26 or possibilities are highly important factors. The ultimate
27 authority to make fundamental decisions rests with the defendant,
28 including deciding whether to accept a plea bargain. Id. There is

1 no rule requiring attorneys to handle their clients with white
2 gloves. It is not coercive for defense counsel to advise or even
3 strongly to urge a client to accept a plea agreement based on the
4 strength of the prosecution's case. See Iaea v Sunn, 800 F 2d 861,
5 867 (9th Cir 1986) ("Mere advice or strong urging by third parties to
6 plead guilty based on the strength of the state's case does not
7 constitute undue coercion.").

8 Defendant, finding himself "scared" by the possibility of
9 serving a longer prison sentence, chose to accept the plea bargain
10 that he considered to be in his best interest. This is precisely
11 the situation the Supreme Court addressed in Brady: "We decline to
12 hold * * * that a guilty plea is compelled and invalid under the
13 Fifth Amendment whenever motivated by the defendant's desire to
14 accept the certainty or probability of a lesser penalty rather than
15 face a wider range of possibilities extending from acquittal to
16 conviction and a higher penalty authorized by law for the crime
17 charged." 397 US at 751.

18 Defendant's theory of coercion finds no corroboration in
19 the record in this case. Defendant affirmed the following in his
20 plea agreement: that he discussed the case and the plea agreement
21 with his attorney and that his attorney provided him with all the
22 legal advice he requested before signing the agreement; that he made
23 the decision to plead guilty knowing the charges, possible defenses,
24 and the benefits and risks associated with going to trial; that his
25 decision to plead guilty was made voluntarily and that no one
26 coerced or threatened him to sign the plea agreement; and that he
27 read the entire plea agreement in the presence of his attorney. CR
28 Doc #23 at 4-5.

1 In his application for permission to enter a guilty plea,
2 defendant declared, as pertinent here, the following:

3 (6) My lawyer has counselled [sic] and advised me on the
4 nature of each charge, on all lesser included charges, and
5 on all possible defenses that I might have in this case.
6 My lawyer has given me the time and attention needed to
7 give my case full consideration. I have no complaint of
8 any kind about the nature or quality of my lawyer's
9 services to or representation of me.

10 * * *

11 (17) I am satisfied that my lawyer has done all that a lawyer
12 could do to counsel and assist me, and I am satisfied with
13 the advice and help my lawyer has given me.

14 * * *

15 (20) My decision to plead "GUILTY" has not been forced or
16 coerced by any threats or compulsion, direct or indirect,
17 to or upon me or any other person.

18 (21) I OFFER MY PLEA OF "GUILTY" FREELY AND VOLUNTARILY AND OF
19 MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE
20 MATTERS SET FORTH IN THE INDICTMENT AND IN THIS
21 APPLICATION AND IN THE CERTIFICATE OF MY LAWYER WHICH IS
22 ATTACHED TO THIS APPLICATION, AND I REQUEST THAT THE COURT
23 ACCEPT MY PLEA OR PLEAS OF "GUILTY."

24 CR Doc #22 (capital letters in original).

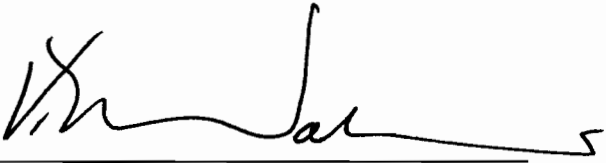
25 Defendant subsequently affirmed during the court's Rule 11
26 colloquy that no one threatened or pressured him to plead guilty (CR
27 Doc #35 at 12), that he was pleading freely and voluntarily (id at
28 13) and that he had no questions he wanted to ask the court prior to
sentencing (id). Accordingly, the court found that defendant's plea
was "made voluntarily and not as the result of ignorance,
inadvertence, coercion or fear or of any matters not disclosed in
the record." Id at 15. The court accepted defendant's guilty plea
and sentenced the defendant in accordance with the parties'
agreement. Id at 15, 19.

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1 Defendant has presented no evidence to persuade the court
2 that its earlier determination of voluntariness should be
3 reconsidered.

4 The defendant's motion is DENIED. The clerk is directed
5 to close file number C 06-3720.

6
7 IT IS SO ORDERED.

8 
9 VAUGHN R WALKER
United States District Chief Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

Luis Perez-Gonzalez,

Defendant.

Case Number: CR05-0665 VRW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 20, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Andrew P. Caputo
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Josh Alan Cohen
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Dated: February 20, 2007

Richard W. Wieking, Clerk
By: Cora Klein, Deputy Clerk

